

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

A.C.,

Claimant,

vs.

WESTSIDE REGIONAL CENTER,

Service Agency.

OAH No. 2011110446

DECISION

Amy C. Lahr-Yerkey, Administrative Law Judge with the Office of Administrative Hearings, heard this matter on December 7, 2011, in Culver City, California.

Humberto C., Claimant's father, represented A.C. (Claimant).¹

Lisa Basiri represented the Westside Regional Center (WRC or Service Agency).

Oral and documentary evidence was received at the hearing. The record was held open until December 14, 2011, for submission of additional documentation. WRC submitted a six-page document on December 13, 2011, and it was marked for identification as Exhibit 15, and received into evidence. The matter was submitted for decision on December 14, 2011.

ISSUE

The question in this matter is whether Claimant remains eligible for regional center services.

¹ Initials have been used to protect Claimant's privacy.

EVIDENCE RELIED UPON

Documentary: Service Agency's exhibits 1-15; Claimant's exhibit A.

Testimonial: Thompson J. Kelly, Ph.D.; Claimant's father.

FACTUAL FINDINGS

1. Claimant is an eight-year-old male. At age 2 years, 9 months, he was referred to the regional center for an evaluation. Claimant was initially given a provisional diagnosis of Pervasive Developmental Disorder, and he received regional center services through the present.

2. By letter dated October 3, 2011, WRC proposed to terminate Claimant's regional center services in January 2012. WRC proposed fading out Claimant's services because recent test results showed that he did not have a developmental disability which made him eligible for regional center services.

3. Claimant timely filed a fair hearing request.

4. On March 15, 2011, Jessica Quevado, Psy. D., conducted a psychological evaluation of Claimant. Dr. Quevado administered two tests: the Wechsler Preschool and Primary Scales of Intelligence-Third Edition; and the Vineland Adaptive Behavior Scales-Second Edition (Vineland). She found that Claimant scored above-average on the IQ and reading test, and average on the Performance IQ and arithmetic tests. In addition, his "adaptive abilities, as measured by the [Vineland], find that he functions within the borderline range on the Communications Domain and the Daily Living Skills Domain. Andrew's Socialization Domain and Motor Skills Domain fell within the mildly delayed range. Andrew appears to have difficulty performing tasks that involve small muscles, including forming letters when he writes . . . [he] also has difficulties with buttoning buttons as reported by parents. [Claimant] demonstrates atypical relatedness, and restricted patterns of behavior."

5. Dr. Quevado also evaluated Claimant using the diagnostic criteria for an Autistic Disorder as outlined in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition-Text Revision (DSM-IV-TR). Dr. Quevado found that although Claimant met some of the criteria for an Autistic Disorder diagnosis, the extent and severity of his deficits was not sufficient to qualify him for this diagnosis. Thus, she concluded that an appropriate diagnosis for Claimant was "Pervasive Developmental Disorder, Not Otherwise Specified."

6. In November 2009, the Los Angeles Unified School District (LAUSD) evaluated Claimant to assess his eligibility for special education and related services. The assessment noted that Claimant did not have a specific learning disability, but that he

displayed “autistic-(or asperger) like characteristics.” LAUSD determined that Claimant was eligible to receive special education services.

7. Claimant’s most recent Individualized Education Plan (IEP), dated November 30, 2011, showed that he has met multiple objectives and is progressing well. Claimant has difficulty with writing, and that is attributed to his motor skills. LAUSD intends to screen Claimant to determine if occupational therapy may assist him.

8. Thompson J. Kelly, Ph.D., WRC Chief Psychologist and Manager of Intake and Eligibility, testified at the hearing. Dr. Kelly explained that the label “provisional” is a working diagnosis, which means that there was not enough evidence at the time of the initial assessment to definitively assign a diagnosis; a provisional diagnosis needs to be clarified later when some developmental variables have settled down. Dr. Kelly opined that Claimant has benefitted from regional center services, and has progressed tremendously over the past few years. Dr. Kelly noted that Claimant has many more abilities than WRC previously ascertained. Claimant is above standards in many areas. Although self-direction remains a challenge for Claimant, he is able to function independently, and this area is not a significant functional limitation in Claimant’s life. Dr. Kelly acknowledged that Claimant might benefit from occupational therapy, but stated that any difficulties Claimant has due to his fine motor skills are not substantially handicapping. Dr. Kelly also noted that Claimant has some mild characteristics of autism, but not enough to diagnose him as autistic. Claimant does not meet the criteria for an autism diagnosis. On cross examination, Dr. Kelly also acknowledged that Claimant has unmet goals in speech and writing, but explained that these are not developmental issues. Claimant has a learning-disabled profile and should continue to receive school services. He pointed out that Claimant is able to learn at his appropriate age-level and that his evaluation results indicate consistency between multiple settings, and over several years’ time. Dr. Kelly opined that even if Claimant is re-tested in five years, his profile will likely look the same. In sum, Dr. Kelly opined that Claimant’s prognosis is very promising.

9. WRC submitted a behavioral progress report from Beautiful Minds, Center for Autism, Inc. (Beautiful Minds). The report stated that Claimant has shown progress; he has improved in compliance, ability to communicate, play skills, and quality of interaction with adults. He has also reduced tantrum behaviors. He continues to struggle with social skills and communication skills. The report noted that “[i]n November and December 2011 hours will reduce to 30 hours a month of behavioral intervention, 6 hours supervision per month and 2 hours of clinic meetings per month.”

10. Claimant’s father testified at the hearing. He acknowledged that Claimant has benefitted from regional center services. He remains concerned about his son’s behaviors, for example, Claimant sometimes hits his head with his hands, and he hides under the bed when he has done something wrong. Claimant’s father is unsure of how to handle Claimant’s aggression.

11. Claimant's father stated that Beautiful Minds, the agency who provides behavioral services to Claimant, had prematurely reduced Claimant's services, despite this pending hearing. Service Agency agreed that services should have been maintained throughout the duration of this appeal, and proposed to inquire with Beautiful Minds to determine whether Claimant had received the proper amount. Service Agency submitted documentation from Beautiful Minds submitted after the close of the hearing. (Exh. 15.) Beautiful Minds did not submit billing records from August through November 2011. As noted above, Beautiful Minds' most recent progress report indicated that it intended to cut Claimant's hours in November and December. Thus, the evidence showed that Claimant's hours were improperly reduced during those two months.

LEGAL CONCLUSIONS

1. Cause exists to deny Claimant's appeal requesting continued regional center services, as set forth in Factual Findings 1 through 11, and Legal Conclusions 2 through 7.

2. The Lanterman Developmental Disabilities Services Act ("Lanterman Act") governs this case. (Welf. & Inst. Code, § 4500 et seq.) "An individual who is determined by any regional center to have a developmental disability shall remain eligible for services from regional centers unless a regional center, following a comprehensive reassessment, concludes that the original determination that the individual has a developmental disability is clearly erroneous." (Welf. & Inst. Code § 4643.5, subd. (b).)

3. To establish eligibility for regional center services under the Lanterman Act, Claimant must show that he suffers from a developmental disability that "originate[d] before [he] attain[ed] 18 years old, continues, or can be expected to continue indefinitely, and constitutes a substantial disability for [him]." (Welf. & Inst. Code, § 4512, subd. (a).)

4. "Developmental disability" is defined to include mental retardation, cerebral palsy, epilepsy, autism, and "disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation, but shall not include other handicapping conditions that are solely physical in nature." (Welf. & Inst. Code, § 4512, subd. (a).)

5. The Lanterman Act does not explicitly include "autistic spectrum disorders" in its definition of a qualifying developmental disability. Thus, "autistic spectrum disorders," such as Asperger's Disorder or Pervasive Developmental Disorder Not Otherwise Specified, may not qualify an applicant for regional center services under Welfare and Institutions Code section 4512, subdivision (a). Psychiatric disorders alone do not constitute developmental disorders. (Cal. Code of Regs., tit. 17, § 54000, subd. (c).)

6. "Substantial disability" is defined as "the existence of significant functional limitations in three or more of the following areas of major life activity, as determined by a regional center, and as appropriate to the age of the person" in the following categories: (1)

self-care; (2) receptive and expressive language; (3) learning; (4) mobility; (5) self-direction; (6) capacity for independent living; and (7) economic self-sufficiency. (Welf. & Inst. Code, § 4512, subd. (1).)

7. Given the foregoing, Claimant's appeal must be denied. Service Agency has sustained its burden to show that its original determination that Claimant had a developmental disability is clearly erroneous. Service Agency was initially unsure whether Claimant's issues were developmentally-related or whether other developmental variables were in play; thus Service Agency assigned a provisional diagnosis. Claimant's abilities have progressed significantly since Service Agency's original determination. The evidence showed that Claimant does not presently have a developmental disability as defined by the Lanterman Act. There has been no definitive autism diagnosis; his most recent diagnosis was of Pervasive Developmental Disorder. Saliently, the evidence did not show that Pervasive Developmental Disorder constitutes a substantial disability for Claimant in three or more major life activity areas. In addition, the evidence did not establish that Claimant's condition is likely to continue indefinitely. Claimant's evaluation history indicates substantial improvement over time. Without more, a conclusion that Claimant's condition is indefinite cannot be drawn. In sum, Claimant is not currently eligible for regional center services under the Lanterman Act because he does not meet the specified criteria at this time.

8. Although the evidence has established that Claimant is no longer eligible for regional center services, it also showed that Claimant did receive services to which he was entitled, in November and December. Accordingly, Service Agency shall provide an extension of services equivalent to this time period, that is, two months. Instead of terminating Claimant's regional center services in January 2012, as it initially proposed, Service Agency shall provide services through March 2012 at the current level. These services shall include parent-training to address Claimant's father's concerns regarding his behavioral issues.

ORDER

Claimant's appeal is denied. Westside Regional Center may terminate funding of behavioral services for Claimant after March 31, 2012.

DATED: December 28, 2011

AMY C. LAHR-YERKEY
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision: both parties are bound by this decision.
Either party may appeal this decision to a court of competent jurisdiction within 90 days.